STATE OF MICHIGAN

COURT OF APPEALS

CONNIE L. SCHEPPELMANN,

Plaintiff-Appellant,

v

DANIEL L. SCHEPPELMANN,

Defendant-Appellee.

UNPUBLISHED
May 15, 2003

No. 236732
Manistee Circuit Court
LC No. 99-009331-DO

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We reverse and remand.

In a divorce action, "the circuit court must make findings of fact and dispositional rulings." *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996), citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). On appeal, we must uphold the circuit court's factual findings unless they are clearly erroneous. *Id.* A finding is clearly erroneous if, "after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made." *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the findings of fact are not clearly erroneous, this Court must then determine whether the distribution "was fair and equitable in light of those facts." *Id.* We will affirm a dispositional ruling unless we are left with the firm conviction that it was inequitable. *Id.*, 429-430.

Plaintiff argues that the trial court erred by failing to award her (1) an interest in Scheppelmann Electric, a business that defendant received from his father approximately two years after the parties married, and (2) only a $1 interest in certain real property defendant purchased for Scheppelmann Electric with a $50,000 down payment from Scheppelmann Electric profits. Plaintiff further maintains that the trial court clearly erred by finding that plaintiff was at fault for the breakdown of the parties' marriage.

"A division of property in a divorce action need not be equal, but it must be equitable." *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). The trial court should consider the following factors in dividing marital property: the source of the property; the parties' contributions toward its acquisition, as well as to the general marital estate; the duration of the marriage; the needs and circumstances of the parties; their ages, health, life status, and earning abilities; the cause of the divorce, as well as past relations and conduct between the parties; and general principles of equity. *Sands, supra*, 35; *Sparks v Sparks*, 440 Mich 141, 159-

160; 485 NW2d 893 (1992); *Hanaway v Hanaway*, 208 Mich App 278, 292-293; 5267 NW2d 792 (1994). In addition, the trial court may consider fault. *Knowles v Knowles*, 185 Mich App 497, 499; 462 NW2d 777 (1990). However, in assessing fault, the trial court should consider conduct that led to the breakdown of the marriage, and not conduct that occurred after the breakdown of the marriage. *Id*.

Here, in deciding not to award plaintiff any interest in Scheppelmann Electric, the trial court based its ruling on two primary factors: plaintiff's lack of contributions to Scheppelmann Electric and plaintiff's fault. In *Hanaway, supra,* 293, we held that the trial court erred in holding that the plaintiff made no contribution to the parties' business because the plaintiff contributed by running the household and caring for the couples' three children. In *Hanaway*, this Court explained:

> The parties were building an asset as well as enjoying its fruits on an ongoing basis. That plaintiff's contribution to the asset came in the form of household and family services is irrelevant. The marriage was a partnership. The couple nurtured a business and three children, and watched all four grow. Defendant does not claim that he could have done it all himself. [*Id.*, 294.]

Although plaintiff's direct contributions to Scheppelmann Electric were minimal, her contributions to the household and the children were, by defendant's own admission, substantial and permitted defendant to work and grow the business. The fact that defendant may have done some of the laundry or cooking at home and that plaintiff, at times, had some part-time help with housework does not diminish her contribution to the business in the form of household and family services. Accordingly, we conclude that the trial court clearly erred by finding that plaintiff did not contribute to Scheppelmann Electric. See *Hanaway, supra* at 293-294.

The trial court's decision not to award plaintiff any interest in Scheppelmann Electric was also based on its determination that plaintiff was at fault for the breakdown of the parties' marriage. In *Sparks, supra,* 440 Mich at 158, our Supreme Court explained the role of "fault" in determining the disposition of marital property:

> While the Court of Appeals has invariably held that fault remains *a* factor, none of the cases has held that it is the *only* factor. We recognize that the conduct of the parties during the marriage may be relevant to the distribution of property, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance. [Footnote omitted; emphasis in original.]

Here, the trial court stated:

> I find the substantial fault for the breakdown of this marriage to be with the plaintiff. She just – she wants out, she wants to pursue a different life-style, and she has a new romantic interest.

In addition, during plaintiff's testimony, the trial court asked plaintiff, "Well, this—this friend, are you romantically involved with him?" Plaintiff objected to the trial court's question and stated, "Your Honor, this is post-judgment, and—or post-filing, and I think is irrelevant, as far as

post-filing is concerned." The trial court overruled plaintiff's objection and reiterated, "My question is . . . . are you romantically involved with him[?]" The trial court also overruled plaintiff's objection to questions about whether the man with whom plaintiff became involved had his own bedroom when he visited her. Plaintiff testified that the relationship began after plaintiff filed for divorce, but the trial court nevertheless overruled the objection and stated:

> Well, the fact is that these—these people are still married until they're divorced, and so it's relevant. It isn't as though she's unmarried. She is married. She's married to him; he's married to her.

Pursuant to *Knowles, supra*, the trial court clearly erred by finding plaintiff at fault for the breakdown of the marriage because the trial court based its finding of fault on a relationship that began after plaintiff filed for divorce. Plaintiff specifically stated that she met the man in the spring of 1999, after she filed for divorce, and no evidence contradicted plaintiff's assertion that the relationship began after she filed for divorce.

An equitable distribution of the marital assets requires the distribution to be roughly congruent. *Knowles, supra* at 501. Any significant departure from rough equivalence should be supported by a clear exposition of the trial court's rationale. *Id.* Here, the trial court's property division was distinctly incongruent. Depending on the value of Scheppelmann Electric,[1] plaintiff received between 16 percent and 20 percent of the marital property, while defendant received between 80 percent and 84 percent of the marital property. Although the trial court found plaintiff to be at fault, it failed to clearly explain its rationale for dividing the parties' marital assets so inequitably. As our Supreme Court noted in *McDougal, supra*, 451 Mich at 90 (emphasis in original), "fault is an element in the search for an *equitable* division -- it is not a punitive basis for an inequitable division." The trial court appears to have used its clearly erroneous "fault" finding as a punitive basis for an inequitable division of the parties' marital assets.

We hold that the trial court's distribution of the marital property was inequitable. Also, we definitely and firmly believe that the trial court erred in finding that (1) plaintiff was at fault for the breakdown of the marriage based on a relationship that began after she filed for divorce and (2) that plaintiff did not contribute to Scheppelmann Electric. Under these circumstances, it was inequitable for the trial court not to award plaintiff any interest in Scheppelmann Electric or the property acquired with Scheppelmann Electric funds. Accordingly, we remand this case for the trial court to reconsider the property distribution.

Plaintiff also argues that the trial court erred by permitting defendant to compensate her for her interest in the marital home by making monthly payments of $500 with seven percent interest. The trial court's ruling was not inequitable because the method of payment would fairly and completely compensate plaintiff for her interest in the marital property. Furthermore, we reject plaintiff's contention that the trial court's ruling would require her to dissipate her assets. See *Zecchin v Zecchin*, 149 Mich App 723; 386 NW2d 652 (1986).

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[1] The trial court found Scheppelmann Electric to be worth between $220,000 and $320,000. We have determined the parties' respective percentages of the marital assets using both values.

Additionally, plaintiff says that the trial court's award of spousal support was inequitable. We agree. "Alimony is to be based on what is just and reasonable under the circumstances of the case." *Moore v Moore,* 242 Mich App 652, 654; 619 NW2d 723 (2000). Factors to be considered by the trial court in deciding whether to award alimony include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; and (13) general principles of equity. *Thames v Thames,* 191 Mich App 299, 308; 477 NW2d 496 (1991). The trial court shall make specific findings of fact regarding those factors that are relevant to the particular case. *Sparks, supra,* 440 Mich at 159; *Ianitelli v Ianitelli,* 199 Mich App 641, 643; 502 NW2d 691 (1993).

We conclude that the trial court based its alimony determination primarily on its erroneous finding of fault. In addition, the alimony award was inadequate given the trial court's extremely inequitable award of the marital assets, which was also based on the trial court's clearly erroneous finding of fault. Accordingly, we remand for the trial court to reconsider its alimony determination and to articulate its specific findings of fact. *Sparks, supra,* 440 Mich at 159; *Ianitelli, supra,* 199 Mich App at 643.

Plaintiff further contends that the trial court abused its discretion in awarding her only $4,500 in attorney fees. This Court reviews a trial court's decision to award attorney fees in a divorce action for an abuse of discretion. *Stoudemire v Stoudemire,* 248 Mich App 325, 344; 639 NW2d 274 (2001). Objection to the reasonableness of the amount of an award of attorney fees may not be raised for the first time on appeal. *Jansen, supra,* 205 Mich App at 173. Because plaintiff did not object to the reasonableness of the amount awarded below, this issue is not preserved for this Court's review.

Moreover, plaintiff asserts that the trial court erred in its valuation of the marital home, Scheppelmann Electric, the Ford Explorer, and the Cobra kit car. We review the trial court's findings of fact regarding the valuations of particular marital assets under the clearly erroneous standard. *Draggoo, supra,* 429. In cases where marital assets are valued between divergent estimates given by expert witnesses, the trial court has great latitude in arriving at a final figure. *Stoudemire, supra,* 338-339. The trial court has the best opportunity to view the demeanor of the witnesses and weigh their credibility. *Id.* at 339. Plaintiff waived any objection to the value of the marital home by stipulating to the value of the home before trial. Stipulations of fact are binding on the parties. *Staff v Johnson,* 242 Mich App 521, 535; 619 NW2d 57 (2000).

Regarding plaintiff's remaining claims of valuation error, we disagree and find no clear error. The experts' valuations of Scheppelmann Electric were varied. However, the trial court's valuations of Scheppelmann Electric, the Ford Explorer, and the Cobra kit car were all within the ranges established by expert testimony. When a trial court's valuation of a marital asset is within the range established by the proofs, no clear error is present. *Jansen, supra,* 171.

Finally, plaintiff asserts that this case should be reassigned to a different trial judge on remand. After reviewing plaintiff's arguments and the lower court record, we disagree. Although the trial judge made errors below, his handling of this matter and statements on the

record do not indicate any bias, nor do they suggest that the trial court would have difficulty adjudicating this matter objectively. *Feaheny v Caldwell*, 175 Mich App 291, 309; 437 NW2d 358 (1989). Accordingly, we deny plaintiff's request for a different trial judge on remand.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Patrick M. Meter
/s/ Donald S. Owens